

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 25 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FEDERAL NATIONAL MORTGAGE)	2 CA-CV 2011-0033
ASSOCIATION,)	DEPARTMENT B
)	
Plaintiff/Appellee,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
MICHAEL SPARLIN and SHARON)	
SPARLIN, husband and wife,)	
)	
Defendants/Appellants.)	
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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20108640

Honorable Richard E. Gordon, Judge

AFFIRMED

Tiffany & Bosco, P.A.
By Mark S. Bosco, Leonard J. McDonald,
and Paul D. Cardon

Phoenix
Attorneys for Plaintiff/Appellee

Michael Benson Sparlin and Sharon Jeanette Sparlin

Tucson
In Propria Personae

K E L L Y, Judge.

¶1 Appellants Michael and Sharon Sparlin appeal from the trial court’s entry of judgment finding them guilty of forcible detainer of real property following a trustee’s sale. They argue the court 1) erred in concluding appellee Federal National Mortgage Association (FNMA) was entitled to possession of the property, 2) lacked jurisdiction to award possession of the property, and 3) violated their right to a jury trial and due process. Finding no error, we affirm.

Background

¶2 “We view the facts in the light most favorable to sustaining the trial court’s judgment.” *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 2, 36 P.3d 1208, 1210 (App. 2001). The Sparlins acquired a loan secured by a deed of trust encumbering the subject residential property. After they defaulted on the payment of the loan, FNMA acquired title to the property at a trustee’s sale. The Sparlins continued to occupy the property, and FNMA sent a letter demanding possession. After the Sparlins failed to vacate, FNMA filed an action to evict them pursuant to A.R.S. § 12-1173.01. Following a bench trial, the court found the Sparlins guilty of forcible detainer and, in a separate ruling, entered judgment in favor of FNMA. *See* Ariz. R. P. Eviction Actions 11(d) (providing for trial by judge “regarding any legal issues”). This appeal followed.

Discussion

¶3 As a preliminary matter, even though the Sparlins are unrepresented, they are held to the same standards as “qualified member[s] of the bar.” *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983). A party proceeding in propria

persona “is entitled to no more consideration than if he had been represented by counsel.”¹ *Id.* As the appellants, the Sparlins were required to “mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised.” *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). The Sparlins did not include the transcripts of any trial court proceedings in the record on appeal. *See* Ariz. R. Civ. App. P. 11(b)(1). In the absence of a transcript, we must presume the record supports the court’s ruling. *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005).

¶4 The Sparlins claim the trial court erred in concluding FNMA was entitled to possession of the subject property. On appeal from a bench trial, we must affirm if any evidence supports the court’s judgment; we review legal issues de novo.² *Inch v. McPherson*, 176 Ariz. 132, 136, 859 P.2d 755, 759 (App. 1992). A forcible detainer action is a summary proceeding created by statute to provide a speedy remedy to gain actual possession of a property. *Mason v. Cansino*, 195 Ariz. 465, ¶ 5, 990 P.2d 666, 667 (App. 1999). In such an action, “the only issue shall be the right of actual possession and

¹The Sparlins’ brief largely fails to comply with Rule 13(a), Ariz. R. Civ. App. P. It consists mainly of one-sentence assertions unsupported by argument, authority, or citation to the record. Although an appeal may be dismissed when it fails to comply with minimum standards, *see Adams v. Valley National Bank of Arizona*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984), in our discretion we address the arguments to the extent we are able.

²Throughout their brief, the Sparlins refer to the trial court’s “summary judgment” order. But, the court did not grant summary judgment; rather, it held a bench trial on the forcible detainer action. We therefore assume the Sparlins’ arguments refer to the court’s rulings at trial.

the merits of title shall not be inquired into.” A.R.S. § 12-1177(A). As a general rule, the court in a forcible detainer action is precluded from determining the validity of title. *See Curtis v. Morris*, 186 Ariz. 534, 534-35, 925 P.2d 259, 259-60 (1996).

¶5 The trial court was presented with a copy of the Trustee’s Deed Upon Sale conveying the property to FNMA. A deed issued at a trustee’s sale raises “the presumption of compliance with the requirements of the deed of trust and [the statutes] relating to the exercise of the power of sale and the sale of the trust property.” A.R.S. § 33-811(B). The court’s minute entry of the proceeding reflects its findings that “the Deed Upon Trustee Sale appear[ed] to be valid” and that no evidence had been offered to “allow [it] to deny the relief requested.” It also reflects the court’s finding that the Sparlins’ arguments and evidence did not address possessory interest but instead focused on “who is entitled to the property under the title.” *See* § 12-1177(A). On the record before us, therefore, the Sparlins did not rebut the presumption established by the Trustee’s Deed Upon Sale that FNMA was entitled to possession of the property. And, because we lack transcripts of the proceeding, we must presume the court’s rulings are supported by the record. *Kohler*, 211 Ariz. at n.1, 118 P.3d at 623 n.1. Accordingly, the court did not err in determining FNMA was entitled to possession.³

³The Sparlins also contend no evidence was presented to the trial court “to show that proper notices were mailed.” The Sparlins do not explain what they mean by proper notices nor do they cite authority in support of this claim. The argument is therefore waived. *See* Ariz. R. Civ. App. P. 13(a)(6) (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco v.*

¶6 The Sparlins also claim the trial court “lack[ed] subject matter jurisdiction to grant possession of [the] [p]roperty to” FNMA. We disagree. “[T]he phrase ‘subject matter jurisdiction’ refers to a court’s statutory or constitutional power to hear and determine a particular type of case.” *State v. Maldonado*, 223 Ariz. 309, ¶ 14, 223 P.3d 653, 655 (2010). Although forcible detainer originally applied only to landlord-tenant relationships, § 12-1173.01 “expanded the scope of the [forcible detainer] remedy to include transactions in which one holds over in possession after the property has been sold through foreclosure, trustee’s sale, forfeiture, execution, or other transactions where ‘the property has been sold by the owner and the title has been duly transferred.’” *Curtis*, 186 Ariz. at 535, 925 P.2d at 260, *quoting* § 12-1173.01(A)(5). In this case, a forcible detainer action was necessary and appropriate to allow FNMA to obtain immediate possession of the premises, *see* § 12-1173.01(A)(2), and the superior court was the proper court in which to bring the action, Ariz. Const. art. VI, § 14(5) (“The superior court shall have original jurisdiction of . . . [a]ctions of forcible entry and detainer.”). Therefore, the court did not lack subject matter jurisdiction to find forcible detainer and to order the Sparlins to surrender possession of the property.⁴

Indus. Comm’n, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant’s failure to develop and support argument waives issue on appeal).

⁴The Sparlins also appear to argue the trial court erred by not granting their request for sanctions against counsel for FNMA because counsel “fil[ed] unsubstantiated claims.” But they have waived this issue for insufficient argument. *See* Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393-94 n.2. And, in any case, because we conclude the court correctly determined FNMA was entitled to relief on its forcible detainer action, we disagree the claims are unsubstantiated.

¶7 The Sparlins next raise numerous arguments under the heading “Newly Discovered Evidence.” The Sparlins first presented these arguments to the trial court in a motion to vacate the judgment pursuant to Rule 60(c), Ariz. R. Civ. P., following the notice of appeal. The court correctly held it lacked jurisdiction to consider the motion. *See In re Estate of Condry*, 117 Ariz. 566, 568, 574 P.2d 54, 56 (App. 1977) (trial court divested of jurisdiction to consider Rule 60(c) motion upon appeal from prior order). Legal theories must be presented to the trial court in a manner that allows the court to address all issues on their merits. *Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, ¶ 17, 158 P.3d 232, 238 (App. 2007). Because the court did not have an opportunity to address the Sparlins’ “newly discovered evidence” arguments on their merits, they are waived on appeal, and we do not address them. *See id.*

¶8 The Sparlins also allege various constitutional violations concerning their rights to a jury trial and due process. To the extent we understand this argument, it is without merit. As the trial court correctly noted, the Sparlins did not request a jury trial at or prior to the initial appearance. And, Rule 11(d), Ariz. R. P. Eviction Actions, provides that “[f]ailure to request a jury trial at or before the initial appearance shall be deemed a waiver of that party’s right to a jury trial.”⁵ The remainder of the Sparlins’ brief consists of assertions regarding the validity of title and other issues outside the scope of a forcible detainer proceeding. Because the Sparlins do not cite to the record

⁵The trial court also found that, even had a jury trial been requested, the action “would be subject to a motion for summary judgment” because the Sparlins had not addressed “possessory interest.”

and have not provided a transcript of the proceedings, it is unclear whether the arguments were raised below. *See Airfreight Express Ltd.*, 215 Ariz. 103, ¶ 17, 158 P.3d at 238-39 (arguments not raised in trial court waived on appeal). Nor does it matter. As we stated above, in a forcible detainer proceeding, “the only issue shall be the right of actual possession.”⁶ § 12-1177(A). We therefore do not address any issues other than those permitted in a forcible detainer proceeding.

Attorney Fees

¶9 FNMA requests an award of attorney fees and costs pursuant to A.R.S. § 12-349. A party requesting fees under § 12-349 must “show by a preponderance of the evidence” that the action was “brought without substantial justification, or solely or primarily for delay or harassment, or that [it] unreasonably expanded or delayed the proceedings.” *Donlann v. Macgurn*, 203 Ariz. 380, 387, 55 P.3d 74, 81 (App. 2002). FNMA claims the Sparlins “unnecessarily expan[ded]” the forcible detainer action and “there was no factual, procedural, or legal justification for th[e] appeal.” Because we agree the appeal lacked substantial justification and unreasonably expanded and delayed the proceedings, we grant FNMA its attorney fees. FNMA, the prevailing party, is awarded its attorney fees and costs upon compliance with Rule 21, Ariz. R. Civ. App. P.

⁶We likewise reject the Sparlins’ claim that the trial court abused its discretion in overruling several of their objections at trial; these objections concerned the validity of title rather than the right to actual possession. *See* § 12-1177(A).

Disposition

¶10 We affirm the judgment of the trial court.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge